

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

AMAZON.COM, INC. AND AMAZON  
DATA SERVICES, INC.,

Plaintiffs,

v.

Case No. 1:20-CV-484-RDA-TCB

WDC HOLDINGS LLC D/B/A NORTHSTAR  
COMMERCIAL PARTNERS, BRIAN  
WATSON, STERLING NCP FF, LLC,  
MANASSAS NCP FF, LLC, NSIPI  
ADMINISTRATIVE MANAGER, NOVA  
WPC LLC, WHITE PEAKS CAPITAL LLC,  
VILLANOVA TRUST, CARLETON  
NELSON, CASEY KIRSCHNER, ALLCORE  
DEVELOPMENT LLC, FINBRIT  
HOLDINGS LLC, CHESHIRE VENTURES  
LLC, 2010 IRREVOCABLE TRUST, SIGMA  
REGENERATIVE SOLUTIONS LLC,  
CTBSRM INC, RODNEY ATHERTON,  
DEMETRIUS VON LACEY, RENRETS  
LLC,

Defendants.

800 HOYT LLC,

Intervening Interpleader  
Plaintiff, Intervening  
Interpleader Counter-Defendant,

v.

BRIAN WATSON, WDC HOLDINGS, LLC,  
BW HOLDINGS, LLC,

Interpleader Defendants,

And

AMAZON.COM, INC. and AMAZON DATA  
SERVICES, INC.,  
Interpleader Defendants,  
Interpleader Counter-Plaintiffs.

**MEMORANDUM IN SUPPORT OF MOTION TO VACATE ORDER GRANTING  
AMAZON'S MOTION FOR DETERMINATION THAT CERTAIN DOCUMENTS AND  
INFORMATION ARE NOT PROTECTED BY ATTORNEY-CLIENT OR WORK  
PRODUCT PRIVILEGES**

Defendant Rodney Atherton respectfully requests that this Court enter an order vacating the October 3, 2022 Order granting Plaintiffs' Motion for Determination that Certain Documents and Information are Not Protected by Attorney-Client or Work Product Privileges, as Plaintiffs withdrew their motion on September 29, 2022 and the motion was never heard on the merits.

**I. INTRODUCTION**

On September 23, 2022, Plaintiffs filed a Motion for Determination that Certain Documents and Information are Not Protected by Attorney-Client or Work Product Privileges. Dkt. 1028. The Motion was scheduled to be heard on October 3, 2022. After meeting and conferring with Amazon's counsel to reach agreement on the Motion, on September 28, 2022, Defendant Rodney Atherton obtained a written waiver of attorney client privilege for relevant communications relating to the transactions and entities referenced in this litigation before April 1, 2020, signed by Von Lacey. Upon receipt of Mr. Von Lacey's waiver, on September 29, 2022, Amazon agreed to withdraw its Motion for Determination that Certain Documents and Information are Not Protected by Attorney-Client or Work Product Privileges.

On September 29, 2022, Plaintiffs filed a Notice of Withdrawal of Plaintiffs' Motion for Determination that Certain Documents and Information are Not Protected by Attorney-Client or Work Product Privileges. Dkt. 1047. Defendant Atherton never filed a brief in opposition to the Motion because the parties agreed it would be withdrawn upon Mr. Atherton's obtaining Mr. Von Lacey's waiver. Amazon filed its Notice of Withdrawal of the Motion prior to the scheduled hearing date, and the matter was not heard on the merits at the hearing on October 3, 2022 or at any other time. Nevertheless, on October 3, 2022, the Court entered an Order granting Plaintiffs'

Motion for Determination that Certain Documents and Information are Not Protected by Attorney-Client or Work Product Privileges and finding that “the crime-fraud exception vitiates any privileges asserted based on an alleged attorney-client relationship between Defendant Rodney Atherton and his co-Defendants Demetrius Von Lacey and Sigma Regenerative Solutions.” Dkt. 1060. Mr. Atherton respectfully requests that this Order be vacated.

## II. ARGUMENT

The authority to vacate an interlocutory order comes from the Court’s “inherent equitable power to modify an interlocutory order at any time prior to final judgment.” *Braxton v. Virginia Folding Box Co.*, 72 F.R.D. 124, 127 (E.D. Va. 1976); see *Simmons Co. v. Grier Bros. Co.*, 258 U.S. 82, 88 (1922). “It is well established that the interlocutory orders and rulings made pretrial by a district judge are subject to modification by the district judge at any time prior to final judgment,....” *In re United States*, 733 F.2d 10, 13 (2d Cir. 1984).

On September 29, 2022, Amazon agreed to withdraw its Motion for Determination that Certain Documents Information are Not Protected by Attorney-Client or Work Product Privileges after Defendant Atherton produced a “waiver of attorney client privilege” signed by Von Lacey. Based on this agreement, Defendant Atherton did not file a brief in opposition to Plaintiffs’ Motion nor was the matter heard on the merits on October 3, 2022, as previously scheduled. The October 3, 2022 Order granting Plaintiffs’ Motion for Determination that Certain Documents and Information are Not Protected by Attorney-Client or Work Product Privileges, specifically finding that the “crime-fraud exception vitiates any privileges asserted based on an alleged attorney-client relationship between Defendant Rodney Atherton and his co-Defendants Demetrius Von Lacey and Sigma Regenerative Solutions,” prejudices Defendant Atherton and should be vacated. Counsel for Amazon has advised that they take no position on this Motion.

### **III. CONCLUSION**

WHEREFORE, for the reasons outlined above, Defendant Rodney Atherton respectfully requests that this Court enter an Order vacating the October 3, 2022 Order granting Plaintiffs' Motion for Determination that Certain Documents and Information are Not Protected by Attorney-Client or Work Product Privileges, specifically vacating the finding that the "crime-fraud exception vitiates any privileges asserted based on an alleged attorney-client relationship between Defendant Rodney Atherton and his co-Defendants Demetrius Von Lacey and Sigma Regenerative Solutions."

**RODNEY ATHERTON**

By Counsel

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**C E R T I F I C A T E**

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